

REMARKS

In accordance with Linda Palomar's conversation with the Examiner on December 3, 2008, the Examiner confirmed that this Office Action is a non-final Office Action.

In accordance with the Examiner's requirement, Applicant encloses a newly-executed Declaration and Power of Attorney from the inventors. Entry and withdrawal of the objection is requested.

Claims 1, 3, 4, 6, 8, 10-17 and 26-36 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over United States Patent No. 6,272,933 to Gradon in view of United States Patent No. 4,366,821 to Wittmaier et al. Reconsideration and withdrawal of the rejection is requested.

Independent claims 1 and 31 have been amended to specify "a housing releasably containing said sensor". As provided in the application as originally filed, PCT publication WO 2004/039444, page 8, lines 11-14 describe that the sensor is removable from the housing. This provides the benefit that the housing can be disposed of and the contaminant free sensor reused. None of the prior art disclose or suggest this arrangement.

Wittmaier describes in Col, 3, lines 30-34 that the sensor may have a screen which surrounds a sensor element. With such an arrangement, in order for the sensor to be used for different patients, the screen would need to be cleaned to prevent cross-contamination. The invention as defined in the present claims overcomes this problem.

The Examiner indicates that Wittmaier discloses a housing (12 & 26). According to Wittmaier, 12 is a T-shaped adapter and 26 is a sideways tubular portion. 12 and 26 are therefore equivalent to the cartridge or open tubular section item 22 and port 26 defined in the present

claims. Wittmaier does not describe sensor element 14 being contained within a housing which engages with the sideways tubular portion 26.

Furthermore, Gradon describes sensor housing means 32 and 33. Thermister 34 is encased or encapsulated within housing 32. Gradon does not disclose or suggest that the sensor may be removed/released from the housing to allow the housing to be disposed of, allowing the sensor to be used for different patients, while avoiding cross-contamination between patients.

Therefore, Applicant submits that the claims are allowable over the prior art. Allowance is requested.


Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

Dated:

Feb 24, 2009

By:


Raiford A. Blackstone, Jr., Reg. No. 25,156
Linda L. Palomar, Reg. No. 37,903

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE and MARR, LTD.
105 W. Adams Street, 36th Floor
Chicago, Illinois 60603